



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/705,341	11/10/2003	Adriano Festa	7202-46	5158
30448 7590 02/06/2007 AKERMAN SENTERFITT P.O. BOX 3188 WEST PALM BEACH, FL 33402-3188			EXAMINER PRATT, HELEN F	
			ART UNIT	PAPER NUMBER
			1761	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		02/06/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/705,341

Applicant(s)

FESTA ET AL.

Examiner

Helen F. Pratt

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 9 and 10 are indefinite in the use of the phrase "and water-based foodstuff, like a ". The phrase "like a" is unclear, as to whether it is actually the cited ingredients or just what ingredients are encompassed within that phrase.

Claim 11 is indefinite in the use of the phrase "such as". The phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d). Claim 11 is also indefinite in the use of the phrase "and in cream" on line 2, page 4. Since the claim has been amended this phrase no longer makes sense.

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Art Unit: 1761

3. Claims 1 and 3-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuil et al in view of Ammedick-Naumann et al (US Pat. No. 6,254,918) and Blaker et al (US 2003/0129292). With regard to claim 1, Kuil et al disclose a soup and sauce concentrate that is ambient stable having a water activity of below 0.92 (abstract) comprising 5-65% of fat or oil, 1-35% of a flavoring composition that includes vegetables (col 1 lines 58-64, col 3 lines 7-12) and a pH preferably less than 5.0 (col 2 lines 49-59). However, Kuil et al failed to disclose an organoleptically characterizing ingredient in a range, of 50-70%. Ammedick-Naumann et al teach a sauce aid comprising of food grade oil, a finely divided vegetable powder containing cell wall and/or fiber (abstract) at a range of 10-50% (col 1 lines 60-62); this range encompasses applicant's recited range. It would be obvious to one of ordinary skill in the art to modify Kuil et al with the teaching of Ammedick-Naumann in order to help stabilize the sauce. In addition it is well known to incorporate vegetables at high percentages in sauce as evidenced by Blaker et al wherein tomato puree is utilized in a spaghetti sauce at 64% (0128), which is within applicant's recited range.

4. With regard to claim 3, Kuil et al disclose a most preferred water activity between 0.7 and 0.9 in order to increase microbial stability at ambient conditions (col 2 lines 49-52) this range encompasses applicant's recited range. It would be obvious to one of ordinary skill in the art to expect a lower water activity in order to increase microbial stability.

5. With regard to claim 4, Kuil et al disclose a pH less than 5 and more preferably at least 4.0 (col 2 lines 53-56) for microbial stability. This range encompasses applicant's

Art Unit: 1761

recited range. It would be expected that the pH would be at this level in order to improve the stability of the soup concentrate.

6. With regard to claims 5-6, Kuil et al failed to disclose the types of edible oils incorporated in the soup concentrate. However, Ammedick-Naumann et al teach suitable food grade oils including olive oil, soybean oil, etc. It would be obvious to one of ordinary skill in the art to modify Kuil et al with the teaching of Ammedick-Naumann and expect that these oils have low saturated fatty acid content as instantly claimed because they are food grade oils.

7. With regard to claim 7, Kuil et al disclose that herbs and spices can be incorporated into the soup concentrate (col 3 lines 7-10).

8. With regard to claim 8, Kuil et al disclose that the vegetables incorporated in the soup or sauce base are chopped components including mushrooms, tomatoes, etc (col 3 lines 11-15).

9. With regard to claims 9-10, Kuil et al disclose that the concentrated base product could be mixed/diluted with an aqueous liquid such as water, milk, cream vegetable juices etc in order to prepare a ready-to-eat finished sauce (col 3 lines 40-50).

**10.** Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kuil et al in view of Blaker et al (US 2003/0129292) and Moses ([www.fatfree.com](http://www.fatfree.com)). Kuil et al disclose a soup and sauce concentrate that is ambient stable having a water activity of below 0.92 (abstract) comprising 5-65% of fat or oil, 1-35% of a flavoring composition that includes chopped vegetables (col 1 lines 58-64, col 3 lines 7-15) and a pH

Art Unit: 1761

preferably less than 5.0 (col 2 lines 49-59). However, Kuil et al failed to disclose an organoleptically characterizing ingredient in a range, of 50-70%. It is well known to incorporate vegetables at high percentages in sauce as evidenced by Blaker et al wherein tomato puree is utilized in a spaghetti sauce at 64% (0128), which is within applicant's recited range. Kuil et al failed to disclose the step of subjecting the organoleptically ingredient to a mild heat treatment and reducing it to cream. Blaker et al teach the process of preparing a sauce comprising the steps of heating diced tomatoes to a temperature of 60-120°C, followed by concentration e.g. water removal by evaporation (0054). Moses teaches a recipe for preparing a creamy corn soup comprising forming a mixture comprising some corn, broth, milk, onion and pureed a blender until smooth. Then the remaining corn is added to the mixture. The mixture is then reheated. It would be obvious to one of ordinary skill in the art to modify Kuil et al with the teachings of Blaker et al and Moses in order to provide a sauce that is microbiologically stable because of its low pH and water activity, which is similar to applicant's recited pH, and water activity.

Claims 1, 3-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bakal (4,572,836).

Bakal discloses a process of harvesting vegetables such as parsley, cleaning it, and then reducing the pieces to a size of 1,000 microns, and then to a particle size of 500 microns for 5 minutes. Reducing the particle size for about 5 minutes is seen to have made a cream of the vegetable mixture, then acids and salt are added to the particulate parsley. The vegetable mixture is combined with corn oil and heated to 150

Art Unit: 1761

C. This is seen to have been a concentration temperature, since water is lost from a mixture with boiling temperatures. The mixture is then heated to 90 C. for 2 minutes which is seen to be a pasteurization temperature (col. 4, lines 50-70, col. 5, lines 1-11). The pH is 4.5 (col. 6, line 13). Amounts of 40-65% by weight of vegetables and 25-50% of oil are used and the starting ingredients are fresh as the herb plant is reduced in size (col. 2, lines 25-34), col. 4, lines 35-43). Claim 11 differs from the reference in the particular water activity (AW) of the product. However, as the product has been treated as claimed and salt has been added plus the product is concentrated and no water has been added, it is seen that the water activity would have been within the claimed range. Therefore, it would have been obvious to make a pasteurized foodstuff from fresh vegetables as claimed.

The limitations of claims 1, 3, 4, 7, 8 have been disclosed above and are obvious for those reasons.

Oils with low amounts of saturated fatty acids as in claims 5 and 6, such as peanut oil, and olive oil are disclosed in col 3, lines 54-60.

Claims 9 and 10 further require a kit containing a sauce for pasta and rice along with other water based foodstuff's. However, nothing new is using the claimed composition as a seasoning in a kit as that is the function of the composition. Herbs (vegetables and onions) are generally used as seasonings. Therefore, it would have been obvious to use the seasoning of Bakal for its known function with pasta and other ingredients.

## ARGUMENTS

Art Unit: 1761

Applicant's arguments filed 7-25-06 have been fully considered but they are not persuasive. Applicants argue that fresh products are not used in Ammedick-Naumann et al. since the composition has been reduced to powders. However, no limitation is seen to what size the vegetables are to be reduced to exclude the powders of the references.

Applicants argue that the claimed composition does not need to be stabilized. However, the instant claims have not excluded any stabilization agents. Applicants actually include tomato as a sauce base preparation, so it is not seen how tomato puree can be excluded.

As to Blaker this reference is used in combination with other references. Also, applicants have not excluded the very common use of onion in their claims.

Applicants argue that the reference to Blaker does not require the claimed concentration. However, applicants only claim concentration, with no temperatures or time. Certainly heating to 120 C as in Blaker would cause concentration, since boiling causes evaporation. Also, heating vegetables as to preserve them is so well known, that it would have been within the skill of the ordinary worker to heat and concentrate vegetables, particularly as applicants do not claim any particular vegetables. Moses is used in combination with the other references. Certainly long simmering does allow evaporation to take place and nothing has been shown to the contrary.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP



Art Unit: 1761

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen Pratt whose telephone number is 571-272-1404. The examiner can normally be reached on Monday through Friday, 9:30 am - 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1761

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Hp 2-2-07

  
HELEN PRATT  
PRIMARY EXAMINER